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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/914,867 | 03/13/2002 | Donald D. Brown | 1240.026 | 4216 |

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EXAMINER

SCHWARTZ, CHRISTOPHER P

| ART UNIT | PAPER NUMBER |
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3683

DATE MAILED: 04/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/914,867

Applicant(s)

BROWN ET AL.

Examiner

Christopher P. Schwartz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-84 is/are pending in the application.
- 4a) Of the above claim(s) 36-84 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 11-30 is/are allowed.
- 6) ☐ Claim(s) 1,2 and 31-34 is/are rejected.
- 7) ☐ Claim(s) 3-10 and 35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Christopher P. Schwartz
CHRISTOPHER P. SCHWARTZ
PRIMARY EXAMINER

DETAILED ACTION

Election/Restrictions

1. A telephone call was made to Alexander Kuszewski on 3/24/04 explaining that the examiner reconsidered the restriction requirement mailed on September 5, 2003, and that the grouping of the claims should be as follows:

Group 1 ---- claims 1-35 drawn to the brake pedal structure and locking mechanism classified in class 74/512+ (see patent claims 6,457,568, however).

Group 2 ---- claims 36-50 drawn to the vehicle brake system comprising a master cylinder and hydraulic accumulator, class 188/358+ and 60/570+.

Group 3 ---- claims 51-55 drawn to the vehicle brake system comprising a master cylinder and the specifics of the hydraulic accumulator, class 303/87+.

Group 4 ---- claims 56-59 drawn to the specifics of the hydraulic accumulator alone, class 138/30+.

Group 5 ---- claims 60-66 drawn to the specifics of the master cylinder and one way restrictor valve, class 60/591+.

Group 6 ---- claim 67 drawn to the brake pedal, class 74/512+.

Group 7 ---- claims 68-79 (method claims) drawn to the method of driving a brake pedal, master cylinder, hydraulic accumulator and locking mechanism of the brake pedal, class 188/344+.

Group 8 ---- claims 80-82 drawn to the master cylinder and hydraulic accumulator, class 60/413.

Group 9 ---- claims 83-84, drawn to a brake caliper assembly, class 188/72.4

2. The inventions listed as Groups 1-9 do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The claims claim different aspects of a vehicle brake system in combination subcombination form, specifically a pedal locking mechanism, master cylinder-hydraulic accumulator, hydraulic accumulator, and caliper assembly. These subcombinations have separate utility since they may be used on different parts of the vehicle or for vehicles with normal (non-ABS) brakes and with vehicles with ABS braking capability.

3. Claims 36-84 will be withdrawn from further consideration.

Claims 1-35 will be examined on the merits.

Double Patenting

4. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

5. Claims 1-2 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-2 of prior U.S. Patent No. 6,457,568. This is a double patenting rejection.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Wooters or Kazarian, Jr.

Regarding claims 31-34 both references show a manually driven brake pedal which may be pivoted through an operating position to a locked position in which a locking mechanism latches the brake pedals and an accelerator pedal which is actuated to unlock them. See Wooters elements 14, 18, 32 and the discussion in column 4 lines 55+ and column 5 lines 21+. See Kazarian elements 16 and 24 and the discussion in column 3 lines 42+, column 5 lines 39-47 and lines 58-68.

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Both Wooters and Kazarian lack stating anything about the resistance to accelerator pedal motion/stroke length.

However these limitations are considered simply to be an obvious alternate equivalent to the same characteristics inherent in the systems of Wooters and Kazarian.

Allowable Subject Matter

9. Claims 11-30 are allowed.
10. Claims 3-10, 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

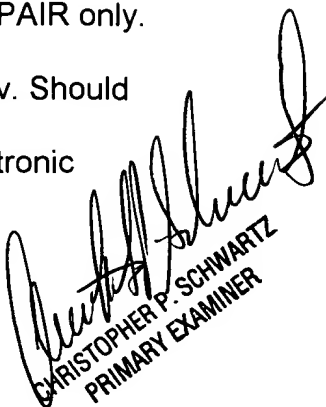
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Schwartz whose telephone number is 703-308-0576. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack W. Lavinder can be reached on 703-308-3421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHRISTOPHER P. SCHWARTZ
PRIMARY EXAMINER

Cps
3/24/04